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Atty. Docket No. 2000-0086-15
USSN 10/820,261

Remarks

Claims 15-49 are active and pending in the present application. All claims stand rejected. In response, Applicants have provided the following remarks and solicit reconsideration and withdrawal of the rejections.

Claims 15-49 stand rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-12 of US Patent 6,778,584. Applicants recognize that an appropriate terminal disclaimer may be used to overcome this rejection once it is the only remaining rejection of the claims.

Claims 15 and 46 stand rejected under 35 USC §103 as unpatentable over Osamu (JP 05-167172). The Examiner asserts that Osamu discloses every element of claim 15 and specifically discloses that the gas being forced across the grating face is Helium. Applicants urge that Osamu does not disclose that gas is forced to flow across a grating face. Accordingly, reconsideration and withdrawal of the rejection under 35 USC §103 of claim 15 are respectfully requested. Claim 46 does not specifically identify Helium as the gas being forced to flow across the grating face. However, Applicants urge that when considered in view in the entirety of the surrounding circumstances, Osamu does not disclose or suggest the invention recited in claim 46 either.

Claims 15 and 46 explicitly recite forcing a gas flow across a grating face. In direct contrast, the '172 patent teaches an approach which forces gas flow against the rear of a diffraction grating. Thus, the teaching of the '172 patent is in direct contrast to the method recited in claims 15 and 46. As the Examiner points out, portions of the '172 patent expressly explain that forcing gas across the face of the grating is to be avoided because it causes unwanted fluctuations. Applicants urge that a reference which teaches directly contrary to the claim recitations can not be considered to teach or suggest those expressly contrary features recited in the claims. In other words, the '172 patent which explains that forcing gas against the rear of the grating so as to purposefully avoid forcing gas against the face of the grating, does not teach or suggest forcing gas against the face of the grating. Accordingly, the '172 patent does not provide the factual basis to support a prima facie case of obviousness with respect to claims 15 and 46 and any claims dependent therefrom. Reconsideration and withdrawal of the rejection under 35 USC §103 of claims 15 and 46, and their dependent claims, are respectfully requested.

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In view of the above remarks and amendments, Applicants believe claims 15-49 are in condition for allowance and passage of this case to issue is respectfully solicited.

Applicants do not believe any other fees are due, however if any other fees are due the Commissioner is authorized to charge our Deposit Account the appropriate amount.

Respectfully submitted,


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